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## Leveraging technology to enhance access to justice for children in Africa

SABINE WITTING — 14 June, 2018



To keep a finger on the pulse of time, technology and innovation are central to the implementation of the 2030 Agenda and the Sustainable Development Goals (SDGs). Context-informed and locally-adapted technology can be the catalyser to identify barriers in achieving the 2030 agenda and provide solutions for the sustainable development change so desperately needed. Ending all forms of violence against children is an integral part of the SDGs, namely through Goal 5 (Gender Equality) and Goal 16 (Peace, Justice and strong Institutions). As for the criminal

justice sector, technology has been both a curse and a saviour.

On the one hand, technology is a worldwide enabler of violence against children, in particular in the area of online sexual exploitation and abuse. The African Union has identified online child sexual abuse and exploitation as an emerging threat of the digital era, and hence included a specific provision on the topic in the newly adopted [African Union Convention on Cyber Security and Personal Data Protection](#).

On the other hand, technology can also be the saviour, in particular with regards to lifting barriers to access to justice for children in Africa. This publication aims to showcase how technology can be leveraged to enhance access to justice for children in Africa, specifically highlighting the opportunities and challenges around the establishment of so-called virtual courts.

### **Virtual courts – a model with many faces**

While there is no exact definition of the term ‘virtual courts’, it commonly refers to a court which uses technology to overcome rule of law challenges or access to justice barriers. While some virtual courts aim to reduce costs and accelerate the finalisation of cases, for example by interviewing an accused via CCTV (closed-circuit television) in the holding cell instead of transporting the person to the court room, other forms of virtual courts aim to minimise the potential re-traumatisation of vulnerable witnesses, in particular children. The latter form of virtual courts shall be the focus point of this publication, and three virtual court

models currently used in Africa will be introduced in the following paragraphs.

### **Kenya: how to convict a travelling sex offender**

Simon Harris, a UK national, has been sentenced to 17 years and 4 months in prison by the Birmingham Crown Court for sexually abusing young Kenyan street children. The case is one of the first of its kind, because the victims did not testify in person, but gave testimony via international video link from Kenya.

This made life easier for the UK criminal justice system, as there was no need for the cost- and planning-intensive transport of the victims plus parents and interpreters to the UK. The international video link also ensured that the victims, some as young as nine years, could give testimony in a familiar and safe environment, and without having to face Harris in court. As a positive side-effect, it hampered a typical strategy often applied by defence lawyers in similar cases, whereby it is claimed that the victims have been lured into giving a false testimony because of the incentive of travelling abroad.

Therefore, the Simon Harris case presents itself as a remarkable milestone of leveraging technology in order to bring travelling child sex offenders to justice.

### **South Africa: creating a safe space for victims in court**

A simple, yet very effective use of technology in the criminal justice sector is the use of CCTV's in courtrooms. The mere visual confrontation with the perpetrator can be so disturbing for the victim, that it might interfere with their capability to testify, and leave them with an additional

traumatic experience, simply due to the victim-hostile court environment. To mitigate these effects, the victim can be given the opportunity to give evidence from a remote witness room, while being linked to the actual court room via CCTV or video link.

The use of CCTV or video link in the courtroom requires special provisions in national criminal procedures acts. While the fair trial principle normally requires the victim to give evidence in the presence of the accused in order to give him or her the opportunity to cross-examine the witness, it has been acknowledged that this right cannot be granted without limitation, in particular when dealing with vulnerable witnesses such as children. Their right to dignity and physical and emotional well-being justifies the interference with the accused's rights to direct interaction with the victim, and hence allow the victim to give evidence via CCTV or video link.

South Africa acknowledged the benefits of such a provision for vulnerable witnesses already in 1996 and introduced a corresponding provision in its Criminal Procedures Act. Section 158 now allows a witness to testify via CCTV or similar electronic media, either based on the court's initiative or the prosecutor's application.

### **Namibia: replacing the examination in chief with a video recording**

Multiple victim interviews are common in the criminal justice system for a variety of reasons. Firstly, the victim might take more time to build rapport with the interviewer, and hence not give a full disclosure in the first interview. However, the victim is often times exposed to multiple

interviews against his or her will. The reason for this is that various stakeholders, such as police officers, social workers, medical doctors and prosecutors come in at different stages of the criminal justice process, and also might require slightly different information. So even if the child fully discloses the incident in the first interview, she might have to repeat the story several times for different stakeholders.

This process is problematic for several reasons: it increases the risk of re-traumatisation, the risk of the child recanting the initial statement, creating contradictions within the statement, or it can simply lead to the child's unwillingness to further participate in the process. By introducing a video recording of the initial interview, all of these risks can be tremendously mitigated: instead of forcing the child to tell the story again, the initially recorded statement can be displayed. This can even go as far as replacing the examination-in-chief with the video recording.

Similar to the use of CCTV's in court rooms, this requires a specific provision in the Criminal Procedures Act, as it takes away the accused's opportunity of cross-examining the victim. The Namibian Criminal Procedures Act states that evidence of a child below the age of 14 years can be given in the form of playing a video record of the making of the statement if the person to whom the statement concerned has been made, gives evidence in such criminal proceedings. Therefore, the defence has at least the chance to cross-examine the interviewer, but does not interact directly with the child. This approach is obviously only efficient if the recorded interview is conducted in a technically sound manner (e.g. no leading questions), and if the statement of the child itself does not leave questions open which the interviewer cannot sufficiently answer during cross-

examination. Otherwise, the court might accord less weight to the child's statement, and a conviction might depend on corroborative evidence.

### **Technology in the criminal justice system – challenges and opportunities**

When discussing the introduction of technology in the criminal justice system in Africa, the immediate response is skepticism.

Indeed, the costs for equipping courts with video records, IT infrastructure, and possibly internet connectivity might be high. However, the public costs for treating abused and re-traumatised children are not only a heavy financial burden, but a moral and ethical heavyweight: if the state can contribute to reduce the re-traumatisation of children in the criminal justice process, initial costs and maintenance should not be the decisive counter-argument.

As in any other sector in Africa, technology and innovation often times fall short due to the technological generation gap. Relevant factors for the digital divide in Africa are not only gender, education, location, and wealth, but also age. As most people in current positions of decision making power are not digital natives, a natural mistrust towards technology is fairly common. This applies in particular to the legal fraternity, which is generally well-known to be conservative and hostile towards any systemic change. Therefore, amendments of criminal procedure acts to introduce CCTV, video links and video records to the court rooms is dependent on the de-demonization of technology and innovation in the first place.

## Changing the narrative – a two-folded approach to justice and technology

With the adoption of the AU Convention on Cyber Security and Personal Data Protection in 2014, Africa is mobilising to jointly combat cybercrime offences, accompanied by the development of cyber-specific legislation at national level. Unfortunately, the strong focus on cybercrime creates a narrative whereby technology is solely depicted as enabler of criminal offences. This narrative neglects the role of technology as a game-changer in delivering justice for children in Africa. Changing this narrative is hence decisive to establish a two-folded approach to technology and justice: acknowledging technology as enabler of criminal activities, while leveraging it to enhance justice for children in Africa, as exemplified by Kenya, South Africa and Namibia.

This contribution has been cross-posted on the [Leiden Law Blog](#).

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